

APPEAL NO. 030707  
FILED MAY 5, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 20, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 18th quarter. The claimant appealed, and the respondent (carrier) responded.

DECISION

Affirmed.

The claimant filed a timely appeal of the hearing officer's decision. The carrier's response was timely filed as a response. However, since the carrier's response was not timely filed during the time period for filing an appeal, we will not consider the carrier's assertion that the claimant's unemployment was not a direct result of his impairment, which assertion is contrary to the hearing officer's finding that the claimant's unemployment during the qualifying period for the 18th quarter was a direct result of his impairment from his compensable injury.

The parties were unable to stipulate to the beginning and ending dates of the 18th quarter and to the beginning and ending dates of the qualifying period for the 18th quarter. They also did not stipulate to the maximum medical improvement (MMI) date. The hearing officer put into evidence the CCH decision and order for the 16th and 17th quarters and Texas Workers' Compensation Commission Appeal No. 023043, decided January 9, 2003, which affirmed a hearing officer's decision that the claimant was not entitled to SIBs for the 16th and 17th quarters. At the prior CCH on the 16th and 17th quarters, the parties stipulated, among other things, that the claimant reached MMI on April 28, 1997, with a 23% impairment rating (IR), and that the 17th quarter began on August 20, 2002, and ended on November 18, 2002. Based on those stipulations, the hearing officer in the present case found that the 18th quarter began on November 19, 2002, and ended on February 17, 2003, and that the qualifying period for the 18th quarter began on August 7, 2002, and ended on November 5, 2002.

The claimant contended at the CCH on the 18th quarter that his MMI date should be April 23, 1997, as was reported by the designated doctor (the designated doctor noted that he was appointed to determine IR only), and that based on that MMI date, the 18th quarter began on November 14, 2002, and ended on February 12, 2003, and the qualifying period for the 18th quarter began on August 2, 2002, and ended on October 31, 2002. This amounts to a five-day difference in the time periods found by the hearing officer. The claimant contends on appeal that the dates of the 18th quarter and of the qualifying period for the 18th quarter found by the hearing officer are invalid. We do not find that the hearing officer erred in calculating the dates of the 18th quarter and of the qualifying period for the 18th quarter. Based on the parties' previous

stipulation that the 17th quarter ended on November 18, 2002, the 18th quarter would be the 13-week period beginning on the day after the last day of the previous quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(6) (Rule 130.101(6)). The qualifying period for the 18th quarter ended on the 14th day before the beginning date of the 18th quarter and consisted of the 13 previous weeks. Rule 130.101(4).

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 18th quarter. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

The hearing officer found that the claimant had some ability to work during the qualifying period for the 18th quarter and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 18th quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the 18th quarter.

The hearing officer noted that the claimant had documented at least one job search during each week of the qualifying period; however, the hearing officer was not persuaded that the claimant made a good faith effort to obtain employment commensurate with his ability to work. The hearing officer stated that the claimant appeared to have made only a minimal effort and that it appeared that the claimant was attempting to build a record for SIBs entitlement rather than making an earnest attempt to secure employment. We note that even if the qualifying period had started and ended five days earlier than was found by the hearing officer, we do not believe that that would make any difference in the outcome of this case in light of the hearing officer's discussion regarding the claimant's minimal effort. We also note that the hearing officer found that December 2, 2002, is the expiration of 401 weeks after the claimant's date of injury of March 27, 1995. See Section 408.083.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Edward Vilano  
Appeals Judge